

**WESTERN STATES CONTRACTING ALLIANCE (WSCA)
PARTICIPATING ADDENDUM (PA)
FOR SMALL PACKAGE DELIVERY SERVICES**

Between
The State of Maryland and FedEx Corporate Services, Inc.
(Name of Carrier)

This Participating Addendum is entered into this 25 day of April 2016, pursuant to the WSCA Master Price Agreement, Number MA 454, Contract for Small Package Delivery Services Solicitation DR11031 dated July 27, 2011, as amended, between the State of Utah as the lead state for the NASPO ValuePoint Cooperative Purchasing Organization and FedEx Corporate Services, Inc. The parties to this Participating Addendum hereby create a separate contract between the Contractor and the State of Maryland acting through the Maryland Department of Budget and Management.

Whereas, the State of Maryland desires to execute a Participating Addendum to procure express mail and small package delivery services from the Contractor for use by State of Maryland Agencies, and Maryland county, municipal, and other non-State of Maryland government or government agencies and not-for-profit entities within the State of Maryland under the WSCA Master Price Agreement; and

Whereas, the State of Maryland is authorized under Md. State Finance and Procurement Code Ann. § 13-102(a)(6) to enter the Master Price Agreement with the Contractor; and

Whereas, this Participating Addendum supersedes and replaces in its entirety all previously executed Participating Addendums, if any, between the Department and Contractor; and

NOW THEREFORE, intending to be legally bound hereby, the State and the Contractor agree as follows:

1. Definitions

In the Participating Addendum, the following words have the meanings indicated:

- 1.1 "Agency" means any unit of Maryland State government procuring services through this Participating Addendum, including but not limited to the University System of Maryland and the Department.
- 1.2 "Agency Coordinator" means the respective designated Agency representative and single point of contact responsible for coordinating payment for services provided under this Participating Addendum with the Contractor.
- 1.3 "COMAR" means Code of Maryland Regulations.
- 1.4 "Contract Monitor" means the Department employee identified in Section 32 of this Participating Addendum as the Contract Monitor.
- 1.5 "Contractor" means FedEx Corporate Services, Inc., whose principal business address is 3650 Hacks Cross Road, Building E 3rd floor, Memphis, Tn. 38125 and whose principal office in Maryland is c/o The Corporate Trust Inc., 351 West Camden St, Baltimore, MD 21201.

- 1.6 "Department" means the Department of Budget and Management.
- 1.7 "Local Participating Entity" means a Maryland county, municipal, and other non-State of Maryland government or government agency, or not-for-profit entity within the State of Maryland. Local participating entities are permitted to use services under this Participating Addendum.
- 1.8 "Master Price Agreement" means the WSCA Master Price Agreement, Number MA 454, Contract for Small Package Delivery Services Solicitation DR11031 dated July 27, 2011, as amended, between the State of Utah as the lead state for the NASPO ValuePoint Cooperative Purchasing Organization and FedEx Corporate Services, Inc.
- 1.9 "Participating Addendum" means this written statement of agreement with accompanying Exhibits between Contractor and the Department that clarifies the operation of the Master Price Agreement for the State, adds State-specific language and other requirements, and evidences the State's willingness to purchase and Contractor's willingness to provide goods and services under the terms and conditions of this Participating Addendum with any and all exceptions noted and agreed upon..
- 1.10 "Procurement Officer" means the Department employee identified in Section 32 of this Participating Addendum as the Procurement Officer.
- 1.9 "Proposal" means the Contractor's Technical and Financial Proposals dated March 30, 2011.
- 1.11 "Purchase Order" means a directive for services under this Participating Addendum entered into by the Department or an Agency and the Contractor under the Participating Addendum, and includes a purchase order issued to the Contractor.
- 1.12 "State" means the State of Maryland.

2. Scope of Participating Addendum

- 2.1 The Contractor shall provide small package delivery services to all Agencies and Participating Entities in accordance with the terms of the Participating Addendum and the following Exhibits, which are attached hereto and incorporated herein by reference.
- 2.2. If there is any conflict between this Participating Addendum and the Exhibits, the terms of the Participating Addendum shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – Maryland Bid/Proposal Affidavit

Exhibit B – Maryland Contract Affidavit

Exhibit C – WSCA FedEx Master Agreement, Number MA 454, dated July 27, 2011 and effective August 28, 2011

Exhibit D – FedEx Pricing Multiple National Carrier, Non-Money Back Guarantee Rates effective August 24, 2015

Exhibit E – Request for Proposals # DR11031 for Small Package Delivery dated February 14, 2011 issued by the State of Utah and WSCA, including all attachments thereto, as modified by Amendments 1 and 2

Exhibit F – Contractor's Proposal

- 2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Participating Addendum. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Participating Addendum, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Participating Addendum price shall be made and the Participating Addendum modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Participating Addendum. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Participating Addendum as changed.
- 2.4 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Participating Addendum as provided in Section 2.2 above, the Participating Addendum may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.
- 3. Period of Performance.**
- 3.1 The term of this Participating Addendum begins on the date the Participating Addendum is signed by the Department following any required approvals of the Participating Addendum, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Participating Addendum as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Participating Addendum shall be for a period of approximately six months beginning on or about 25 April, 2016, or upon final execution by the State, and ending concurrent with the term of the Master Price Agreement, on August 27, 2016.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Participating Addendum shall survive expiration or termination of the Participating Addendum.
- 4. Consideration and Payment**
- 4.1 In consideration of the satisfactory performance of the work set forth in this Participating Addendum and the applicable Purchase Order, an Agency shall pay the Contractor in accordance with the terms of this Participating Addendum and at the prices quoted in the Proposal. The State elects to use the Multiple Carrier option that has Non-Money Back Guarantee pricing under the MA-454, attached hereto as Exhibit D.
- 4.2 The Contractor shall separately invoice each requesting Agency Coordinator for receipt of payment. Payments from Agencies to the Contractor shall be made no later than thirty (30) days after the requesting State Agency's receipt of a proper invoice for Services provided by the Contractor, acceptance by the Agency Coordinator of Services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Participating Addendum. Each invoice for Services rendered shall include the Contractor's Federal Tax Identification Number which is [REDACTED] Charges for late payment of

invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Participating Addendum and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. Contractor's eMarylandMarketplace vendor ID number is [REDACTED]. The Contractor shall also accept payment by Corporate Purchasing Card. The Contractor shall not invoice the State for sales and excise taxes. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The State is not responsible for any taxes levied on the Contractor as a result of this Participating Addendum.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory manner, the Procurement Officer may withhold payment from Contractor until necessary services or corrections in performances are satisfactorily completed, or the Purchase Order has been terminated.

4.4 Payment of an invoice by an Agency is not evidence that services were rendered as required under this Participating Addendum.

4.5 Contractor's eMarylandMarketplace vendor ID number is [REDACTED]

5. **Rights to Records.** Rights to Records provisions are not applicable to this Participating Addendum.

6. **Exclusive Use** Except as may otherwise be set forth in this Participating Addendum, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the an Agency or developed by Contractor relating to the Participating Addendum, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Agency's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Participating Addendum.

7. **Patents, Copyrights, and Intellectual Property**

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a)

procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidential or Proprietary Information and Documentation

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Participating Addendum, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Participating Addendum; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this Participating Addendum.

9. **Loss of Data.** Loss of Data provisions are not applicable to this Participating Addendum.

10. Indemnification

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Participating Addendum.

10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Participating Addendum against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Participating Addendum.

10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Participating Addendum.

10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Participating Addendum, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed

against the State as a result of, or relating to, the Contractor's performance under this Participating Addendum.

10.6 This Section 10 shall survive termination of this Participating Addendum.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Participating Addendum, shall, during the pendency and term of this Participating Addendum and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Participating Addendum.

12. Disputes

This Participating Addendum shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Participating Addendum in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Participating Addendum, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Participating Addendum, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

13.1 This Participating Addendum shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Participating Addendum or to any purchase order or Notice to Proceed issued under this Participating Addendum, or any software, or any software license required hereunder.

13.3 Any and all references to the Maryland Code, Annotated contained in this Participating Addendum shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Participating Addendum, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Participating Addendum.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Participating Addendum succeeding the first fiscal period, this Participating Addendum shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Participating Addendum. The effect of termination of the Participating Addendum hereunder will be to discharge both the Contractor and the State from future performance of the Participating Addendum, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Participating Addendum. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Participating Addendum for each succeeding fiscal period beyond the first.

17. Termination for Cause

- 17.1 If the Contractor fails to fulfill its obligations under this Participating Addendum properly and on time, or otherwise violates any provision of the Participating Addendum, the State may terminate the Participating Addendum by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.
- 17.2 If the Contractor fails to fulfill its obligations under a Purchase Order pursuant to this Participating Addendum properly and on time, or otherwise violates any provision of the Participating Addendum or Purchase Order, an Agency may terminate the Purchase Order by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Agency's option, become the Agency's property. The Agency shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination of the Purchase Order, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination of the Purchase Order and the Agency can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Participating Addendum may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Participating Addendum that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Participating Addendum; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

19. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Participating Addendum.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Participating Addendum are applicable to this Participating Addendum.

22. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Participating Addendum for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Participating Addendum are to be retained for the entire time provided under this section. In the event of any audit, the Participating Addendum or shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Participating Addendum.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Participating Addendum. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Participating Addendum, including but not limited to adequacy and compliance with established procedures and internal controls over the Participating Addendum services being performed for the State.
- 25.2 Upon three Business Days' notice (which is defined herein to mean the official working days of the week to include Monday through Friday, excluding State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.), the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Participating Addendum. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Participating Addendum.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Participating Addendum services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to

audit such subcontractor(s).

25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.

25.5 This Section shall survive expiration or termination of the Participating Addendum.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Participating Addendum;

26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Participating Addendum; and

26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Participating Addendum.

27. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.

The price under this Participating Addendum and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal was inaccurate, incomplete, or not current.

28. No Assignment

This Contract is not transferrable, or otherwise assignable, without the written consent of the Procurement Officer provided, however, that the Contractor may assign monies receivable under the Contract after due notice to the State.

29. Liability

For breach of this Participating Addendum, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:

29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Participating Addendum;

- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Participating Addendum, regardless of the form Contractor's liability for third party claims arising under Section 10 of this Participating Addendum shall be unlimited if the State is not immune from liability for claims arising under Section 10.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Participating Addendum, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Participating Addendum and may result in termination of this Participating Addendum, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

31. Contract Monitor and Procurement Officer

The work to be accomplished under this Participating Addendum shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Participating Addendum shall be referred to the Procurement Officer for determination.

32. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: Rachel Hershey
Procurement Officer
45 Calvert Street, Room 137
Annapolis, MD 21401
Phone: 410.260.7681
Fax: 410.974.3274

With a copy to:

Joy Epstein
Contract Monitor
45 Calvert Street, Room 143
Annapolis, MD 21401
Phone: 410.260.7570; Fax: 410.974.3274

If to the Contractor: Rose Booker
FedEx Corporate Services /Government Sales
3650 Hacks Cross Road Building E, 3rd floor
Memphis, TN 38125

With a copy to: Gayle Gilbert
900 7th Street NW
Washington, DC 20001

33. Use by Maryland Not-For-Profit and Local Government Entities

33.1 A Local Participating Entity may purchase from the Contractor goods or services covered by this Participating Addendum at the same prices chargeable to the State. All such purchases by a Local Participating Entity:

- (1) shall constitute a contract between the Contractor and that Local Participating Entity;
- (2) shall not constitute purchases by the State or a State Agency under this Participating Addendum;
- (3) shall not be binding or enforceable against the State; and
- (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a Local Participating Entity.

33.2 All Participating Addendum prices, terms, and conditions shall be provided to any Local Participating Entity requesting services under this Participating Addendum.

34. Reporting

34.1 The Contractor shall provide shipping reports for all activity conducted under the Participating Addendum on a quarterly basis to the State's Contract Monitor. The reports at a minimum shall contain following: Account number, Agency/ Local Participating Entity name and address, shipping volume by type of service, i.e. ground, express air, etc., pieces, weight and net charges, individual account and total dollar expenditure.

34.2 The Contractor shall also provide access to reports via the Contractor's website that provides the information detailed in Section 34.1 for each Agency and Local Participating Entity under the Participating Addendum.

35. Ordering

Per Provision 14 of Section C "Mandatory Requirements" of the Request for Proposals # DR11031 for Small Package Delivery dated February 14, 2011 issued by the State of Utah and WSCA, including all attachments thereto, as modified by Amendments 1 and 2, the Contractor shall pick up packages from receptacles in locations convenient to Agencies and Local Participating Entities. For the purposes of

Contractor pick up, "locations convenient to Agencies and Local Participating Entities" shall mean the Contractor shall pick up packages from at least one receptacle for each building in which pick up is desired by a using Agency.

36. Training

The Contractor shall provide training at no additional cost to each State Agency and Local Participating Entity upon request. The training shall detail the services provided under the Participating Addendum and use of the Contractor's website for, including but not limited to, submitting orders for service, tracking deliveries, and generating reports.

37. Miscellaneous

- 37.1 Any provision of this Participating Addendum which contemplates performance or observance subsequent to any termination or expiration of this Participating Addendum shall survive termination or expiration of this Participating Addendum and continue in full force and effect.
- 37.2 If any term contained in this Participating Addendum is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Participating Addendum, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 37.3 This Participating Addendum, together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof

IN WITNESS THEREOF, the Department and the Contractor have, through their duly authorized representatives, executed this Participating Addendum. The parties, having read and understood the foregoing Participating Addendum terms, do by their respective signatures dated below, agree to the terms thereof.

CONTRACTOR



March 29, 2016 3/29/16
Date

STATE OF MARYLAND
DEPARTMENT OF BUDGET AND



April 11, 2016
Date

Approved for form and legal sufficiency
this 4th day of April, 2016.



APPROVED BY BPW: N/A
(Date) (BPW Item #)